

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANDRE STEVEN HENRY,

Defendant-Appellant.

UNPUBLISHED

January 10, 2008

No. 274096

Wayne Circuit Court

LC No. 06-007508-01

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 30 to 60 years' imprisonment for the assault with intent to commit murder conviction, two to five years' imprisonment for the felon in possession of a firearm conviction and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant contends he was denied his Sixth Amendment right to the effective assistance of counsel. We disagree. Defendant's claim that he was denied the effective assistance of counsel presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review questions of constitutional law de novo. *Id.*

To prevail on his claim of ineffective assistance of counsel, defendant must establish that his attorney's assistance "fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). There is a strong presumption that defense counsel's actions were sound trial strategy. *Id.* In order to demonstrate prejudice, a defendant must establish that there is a reasonable probability that, but for the mistakes of his attorney, the result of the trial would have been different. *Id.* at 302-303. Here, because defendant failed to preserve the issue of ineffective assistance, our review is limited to errors that are evident on the record. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

Defendant alleges that his attorney falsely advised him that all eight of his prior convictions could be used to impeach him if he chose to testify when, in reality, only two of his prior convictions would be admissible pursuant to MRE 609, those that related to theft,

dishonesty or false statement. As stated above, because defendant failed to preserve this issue for appeal, this Court is limited to reviewing errors that are apparent on the record. The record simply does not substantiate defendant's claim. First, defendant has failed to establish the factual predicate for his claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Moreover, he cannot demonstrate that his attorney's performance prejudiced him. *Toma, supra* at 302-303. Therefore, defendant has failed to demonstrate that he was denied the effective assistance of counsel.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski